Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 318 of 2004

(Under Art. 227 of the Constitution of India)

Jagdish S/O Sri Chaman,
R/O Village Bahadarpur Saini, P.O. Daulatpur,
District Haridwar.

… **Petitioner.**

Versus

1. Presiding Officer, Labour Court, Dehradun.
2. Irrigation Research Institute, Roorkee, District Haridwar
   Through its Research Officer.

… **Respondents.**

Sri Pankaj Miglani, Advocate, learned counsel for the Petitioner.
Ms. Mamta Bisht, holding brief of Learned Standing Counsel for the respondents.

Date March 21, 2006.

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioner has sought order or direction of this Court for setting aside the impugned order dated 24-12-1999 passed by the respondent no.1 whereby the termination of service of the petitioner by the employer w.e.f. 4-6-1992 was held to be legal and proper. It was held that the petitioner had not completed 240 days in the calendar year preceding the termination of his service.

Brief facts giving rise to this writ petition are that the workman-petitioner was a daily wage employee on muster roll of the respondent no.2 since 1974 till 3.6.1992 in different divisions, who was removed from service by the respondent no.2 without any prior notice in violation of Section 6-N of the U.P. Industrial Disputes Act (***for short the Act)***. Feeling aggrieved by the

termination order, the petitioner raised the Industrial Disputes, which was referred in the following terms:-

"Whether the termination of services of the workman mason Sri Jagdish Son of Sri Chaman by the employers from 4-6-92 is proper and legal?

Notices were issued to the parties. The petitioner filed his written statement before the respondent no.1 alleging therein that he was in the employment as mason since 1974 till 3.6.1992 and that he had worked for more than 240 days in each calendar year throughout and his termination order was illegal and in violation of Section 6(N) of the Act. On the other hand, the respondent no.2 in its written statement took the ground that the respondent no.3 was not covered within the definition of industry. It was also stated that there was delay of about 3 years on the part of workman and that the petitioner workman had worked only for 166,1/2 days in preceding 12 month period. Both the parties also filed their respective rejoinder statements. After considering the material produced before the respondent no.1, the learned Labour Court has held that the workman had only worked for a period of 166,1/2 days in the calendar year preceding the date of his termination and the workman failed to establish that he had worked for a period of 240 days continuously during 12 calendar months. Ultimately, the learned Labour Court has held that the reference was bad in law and accordingly passed the impugned order dated 24.12.1999 (Annexure No. 6). Aggrieved, the petitioner has come up in this writ petition.

I have heard learned counsel for the parties and carefully perused the entire material on record.

It has been vehemently submitted by the learned counsel for the petitioner that from a perusal of the muster rolls maintained by the employer itself it is sufficiently proved that the

petitioner workman had continuously worked for period of 192 days. In this connection, the learned counsel has made a reference to the copies of muster rolls filed by the respondent no.2 as Annexure C.A.-1 to the writ petition. It was submitted that if 52 Sundays are added to 192 days, the total number of working days to be counted for comes to 192 + 52 = 244 days. It was argued that even according to the case of the respondent no.2, the petitioner had worked for a period of more than 240 days in the calendar year preceding to the date of termination his services, hence the learned Labour Court was not justified in recording a perverse finding that during the period June 1991 to May 1992, the workman had worked for 166,1/2 days only.

Learned counsel for the petitioner has relied upon the U.P. Government Notification, Labour Department, Section-3 No. 1335/36-3-8 (M.W.)/89 dated July 11, 1990 issued under the Minimum Wages Act, which is also applicable in Uttaranchal State in view of U.P. Reorganization Act, 2000. It was submitted that the petitioner is also covered under that Notification, under the Minimum Wages Act and according to this Notification, he is entitled for inclusion of Sundays for payment of wages for the entire period of one month. It is evident from the said Notification that Irrigation Department and its workmen are fully covered by the Notification aforesaid.

From a bare perusal of the impugned order dated 24-12-1999 passed by the learned Labour Court, it is evident that the learned Presiding Officer placed reliance upon the copies of muster rolls filed by the employer for the period June 1991 to May 1992 and it was held that the workman had worked for a total period of 166,1/2 days. As mentioned above, the copies of the muster rolls for the relevant period are on record, which have been annexed to the Counter Affidavit filed on behalf of the respondent no.2. From a perusal of these documents, it clearly comes out that the workman had worked for a period of 192,1/2 days, excluding 52 Sundays,

though the petitioner has claimed that he worked for 192 days. The contention of the learned counsel for the petitioner has force. The total sum of 192 days plus 52 days thus comes to 244 days. The learned Labour Court has committed manifest error in holding that the workman had not completed 240 days during the preceding 12 months. It has not been challenged by the learned Standing Counsel that the total number of working days as per muster rolls filed by the respondent no.2 is less than 192 days, rather the total thereof comes 194,1/2 days. Thus, on the face of the copies of muster-rolls filed as Annexure C.A.-1 before this Court on behalf of the respondent no.2, I am not inclined to uphold the finding of learned Labour Court that the petitioner had worked for a period of 166,1/2 days.

In the case of ***H.D.Singh Vs. Reserve Bank of India and others [AIR 1986, Supreme Court, 132]***, in calculating the total number of working days on which the workman had worked during a calendar year, besides the actual working days, 52 Sundays and 17 holidays are to be added. After adding 52 + 17 = 69 holidays to 186 days, total days of continuous service rendered by the workman/petitioner thus comes to 255 days, which is more than 240 days. In the case of ***"Workmen of American Express International Banking Corporation V. Management A.E.I.B. Corpn." (AIR 1986 Supreme Court, 458)*** it has been observed by the Apex Court that in assessing continuous service of a workman, while calculating actual working days, Sundays and other paid holidays can be taken into account. Thus it comes out that the petitioner had completed 240 days and as such he is entitled to the benefits of provisions of Section 6-N of the Act. Moreover, the learned Labour Court did not consider the fact that as per Section 2(g) of the Act, the continuous service of 240 days is to be calculated for 12 preceding calendar months for getting the benefits of Section 6(N) of the Act. The Hon'ble Supreme Court in the case of ***"U.P. Drugs & Pharmaceuticals Co. Ltd., Vs. Ramanuj Yadav and others [(2003) 8 Supreme Court Cases, 334]*** has held that ***"if***

a workman has worked for more than 240 days in earlier years, then even though during the year of his retrenchment he has not worked for 240 days, he would be deemed to be in continuous service and his retrenchment would be violative of Section 6-N r/w Sec. 2(g) of Industrial Disputes Act, 1947."

6. In view of the aforesaid verdict of the Apex Court and discussion aforementioned, it is clear that the petitioner workman had completed continuous service of more than 240 days. The finding of the learned Labour Court that the workman had not worked for 240 days is erroneous and the impugned order cannot be sustained in the eye of law and is hereby quashed accordingly. The workman shall be reinstated in service but he shall not be paid any back wages.

7. The writ petition is partly allowed. The workman shall be reinstated in the services in the services but he shall not be paid any back wages. No order as to costs.

(B.S. Verma, J.)

RCP